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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/589,675	06/07/2000	Steven C. Murray	PA1513US	8651
7590 01/12/2006				
MARK A. HAYNES, ESQ. HAYNES BEFFEL & WOLFELD LLP P.O. BOX 366 HALF MOON BAY, CA 94019		EXAMINER FARAH, AHMED M		
		ART UNIT 3735 PAPER NUMBER		

DATE MAILED: 01/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

TW

<b>Office Action Summary</b>	<b>Application No.</b> 09/589,675	<b>Applicant(s)</b> MURRAY ET AL.	
	<b>Examiner</b> Ahmed M. Farah	<b>Art Unit</b> 3735	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-33 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 10, 15-21 and 26 is/are allowed.
- 6) ☒ Claim(s) 1-9, 12-14, 22, 23, and 27- 33 is/are rejected.
- 7) ☒ Claim(s) 14, 24 and 25 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. <u>01/06/2006</u> . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.   |

### **DETAILED ACTION**

Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

In this Office Action, the term fluorescence is treated as 'the emission of electromagnetic radiation that is caused by the flow of some form of energy to the emitting body and which persists only as long as the stimulating radiation is continued.'

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 9, 12, 13, 22, 23 and 31-33 are rejected under 35 U.S.C. 102(b) as being anticipated by Eckhouse US Patent No. 5,405,368.

As to claims 1 and 22, Eckhouse discloses a therapeutic treatment apparatus and methods of use, the apparatus comprising:

A pump source (lamp 102); a lamp-casing 103; and an optical fiber 105, which is wound around the lamp 102 and casing 103, the optical fiber comprising a fluorescent material which is excited by the pump radiation as presently claimed (see Figure 12, and col. 11, lines 19-51).

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Note: the applicants' independent claims recite the pump source has a "narrow spectral band." However, the applicants fail to clearly define in the written description the boundaries and/or the bandwidth of the recited narrow spectral band. In addition, although the applicants disclose the use of frequency-doubled Nd:YAG laser to excite the fluorescent material (see Figure 5; page 6, lines 10-13; and page 14, lines 7-19; and claim 11), they nevertheless teach that the source of pump radiation may be selected, without limitation, from the group consisting of an Nd:YAG laser, an arc lamp or a flashlamp (see page 6, lines 4-10).

Hence, in this Office Action, the lamp/flashlamp of Eckhouse is treated as providing a pump radiation having a narrow spectral band as presently claimed.

As to claim 33, Eckhouse discloses a:

a pulsed light source (flash lamp 14);

a glass tube (15) coaxially surrounding the flashlamp (14), said glass tube comprising a fluorescent material deposited on it, said glass tube adapted to receive incident/pump radiation from the flashlamp and to responsively emit a diffuse radiation having substantially different spectral characteristics with respect to the incident radiation; and

a redirector (elliptical reflector 16) for redirecting at least a portion of the emitted radiation toward a tissue target.

Note: the argument with respect to claim 33 in this Office Action (OA), was presented in an earlier OA mailed on June 20, 200. In the response to that OA, the

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applicants argued that Eckhouse uses a broadband lamp to pump the fluorescent element (see pages 4-5 of the applicants' response filed on November 20, 2002). The Examiner at the time withdrew the prior art rejections in view of Eckhouse. However, a recent review of the applicants' disclosure revealed that the pump source of the instant claims is selected from the group consisting of flashlamps and arc lamps (see page 6, lines 4-10 of the instant application). Therefore, the rejection is being reinstated.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-8, 11, and 27-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eckhouse ('368).

Eckhouse, described above, do not particularly teach the type and/or form of the fluorescent material as recited in the instant claims. However, the use of fluorescent dye or fluorochromes dispersed in a solid medium to produce fluorescent light having a different wavelength from that of the pump source is well known in the optical/medical art. Therefore, at the time of the applicant's invention, it would have been one skilled in the art to use alternative fluorescent materials in order to provide a fluorescent light having a wavelength suitable for the desired treatment.

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As to claim 11, it would have been obvious to one skilled in the art to use a laser as an alternative light source to pump the fluorescent material so as to generate a treatment light having a suitable wavelength.

As to claims 28-30, one skilled in the art would have used the device of Eckhouse to provide treatment to a wide verity of ailments. As clear from the applicants' claims, the type of tissue target being treated is not critical to the invention.

### ***Allowable Subject Matter***

Claims 10, 15-21 and 26 are allowed.

Claims 14, 24 and 25 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See the following references:

US Patent No. Re. 36,634 to Ghaffari defines arc lamp as source of narrow-band light (see col. 4, line 11+);

US Patent No. 6,835,202 to Harth et al. discloses an LED with a narrow spectral band of between 405-440 nm (see col. 3, lines 30-31); and

US Patent No. 6,214,034 to Azar discloses a source of narrow spectral band comprising a flashlamp or an arc lamp (see col. 4, lines 43-45).

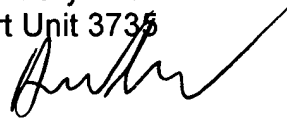
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ahmed M. Farah whose telephone number is (571) 272-4765. The examiner can normally be reached on Mon-Thur. 9:30 AM-7:30 PM, and 9:30 AM - 6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ali Imam can be reached on (571) 272-4737. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ahmed M Farah  
Primary Examiner  
Art Unit 3735



January 9, 2005.